

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**August 10, 2023 at 10:30 a.m.**

1. [23-90335](#)-E-7  
[ALT-1](#)

**CARLOS/ISELA GUTIERREZ**  
Alyssa Thompson

**MOTION TO COMPEL ABANDONMENT**  
**7-25-23 [8]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 25, 2023. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The Motion to Compel Abandonment is granted.**

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

**August 10, 2023 at 10:30 a.m.**

**- Page 1 of 16 -**

The Motion filed by Carlos Gutierrez and Isela Gutierrez (“Debtors”) requests the court to order Nikki B. Farris (“the Chapter 7 Trustee”) to abandon the following property related to a small title business Debtor owns commonly known as CG Title:

1. Business Name
2. Checking Account with Bank of the West
  - a. Balance: \$1,113.64
3. 2007 Toyota Tundra
  - a. Value: \$5,043.00
4. Various Personal Property Items: Tile Saws, Demolition Hammer, Drills, Straight Edges, Work Light, Extension Cord, Shop Vacuum, Hammer, Various Levels, Torpedo Level, Drill/Mixer, Drop Cloths, Notch Trowels, Margin Trowels, Wood Hand Float, Measuring Tape, Utility Knife, Laser Level, Grout Float, Straight Cut Aviation Snips, Chalk Line, Staple Gun, Meter Saw, and Table Saw
  - a. Total Value: \$2,015.00
5. Other Miscellaneous Inventory: \$700.00

(“Property”). The Chapter 7 Trustee’s August 2, 2023 Docket Entry indicates nonopposition.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Compel Abandonment filed by Carlos Gutierrez and Isela Gutierrez (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the following property related to a small title business Debtor owns commonly known as CG Title:

1. Business Name

2. Checking Account with Bank of the West
  - a. Balance: \$1,113.64
3. 2007 Toyota Tundra
  - a. Value: \$5,043.00
4. Various Personal Property Items: Tile Saws, Demolition Hammer, Drills, Straight Edges, Work Light, Extension Cord, Shop Vacuum, Hammer, Various Levels, Torpedo Level, Drill/Mixer, Drop Cloths, Notch Trowels, Margin Trowels, Wood Hand Float, Measuring Tape, Utility Knife, Laser Level, Grout Float, Straight Cut Aviation Snips, Chalk Line, Staple Gun, Meter Saw, and Table Saw
  - a. Total Value: \$2,015.00
5. Other Miscellaneous Inventory: \$700.00

(“Property”) and listed on Schedule A / B and C by Debtor is abandoned by the Chapter 7 Trustee, Nikki B. Farris (“Trustee”) to Carlos Gutierrez and Isela Gutierrez by this order, with no further act of the Trustee required.

2. [23-21438-E-12](#)      **WESLEY/RUTH WOOLERY**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)      **VOLUNTARY PETITION**  
2 thru 3      **5-2-23 [1]**

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 6/8/23 to be conducted in conjunction with the continued hearing on the Motion for Use of Cash Collateral. (Specially set day to the Modesto Bankruptcy Division Courthouse Calendar.)

Operating Reports filed: 7/13/23 [May]; 7/14/23 [Jun]

Chapter 12 Eligibility Report filed 6/14/23 [Dckt 59]

Trustee Report at 341 Meeting lodged 7/19/23

Second Status Conference Report filed 7/25/23 [Dckt 67]

Chapter 12 Plan filed 7/31/23 [Dckt 69]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

**Sufficient Notice Provided.** The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee and fewer than all creditors on May 12, 2023. By the court's calculation, 4 days' notice was provided. The court required 4 days' notice. Dckt. 30.

The Certificate of Service, Dckt. 26, indicates fewer than all creditors have been served, however, no "box" is checked to indicate whether these creditors are:

1. Creditors that have filed claims,
2. Creditors holding allowed secured claims,
3. Creditors holding allowed priority unsecured claims,
4. Creditors holding leases or executory contracts that have been assumed, or
5. 20 largest creditors

as required by EDC Form 7-005. From review of the Certificate of Service filed, it appears only registered users of the court's electronic filing system were served. Yet, Movant has not attached a copy of the clerk's electronic service matrix, as required by EDC Form 7-005, therefore, it is unclear if all parties in interest required to be served, were served. At the hearing, counsel addressed these shortcoming.

In light of Creditor having filed an opposition and being in attendance at the hearing, the court waived the deficiency for this Initial Hearing on the Motion.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

<b>The Motion for Authority to Use Cash Collateral is <span style="color: red;">XXXXXXX</span></b>
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**AUGUST 10, 2023 CONTINUED HEARING**

The court has authorize the prior use of cash collateral as agreed by the Parties. The most recent order was entered on June 9, 2023. Dckt. 58. No supplemental pleadings for the further use of cash collateral have been filed.

At the hearing, XXXXXXX

**REVIEW OF MOTION**

Wesley and Ruth Woolery (“ Debtor in Possession”) moves for an interim order authorizing the use of cash collateral and requests the court schedule a final hearing to consider entry of a final order authorizing use of cash collateral, granting replacement liens, and approving the proposed Debtor in Possession budget.

Debtor in Possession requests the use of cash collateral to (1) pay post-petition operating expenses incurred in the ordinary course of business; (2) pay costs and expenses of administration of the case; and (3) pay all other amounts as specified in the Debtor in Possession budget. Debtor’s Declaration in support of the Motion states the use of cash collateral is necessary to continue farming operations. Dckt. 23. Upon review of the proposed budget, Exhibit 1, Debtor’s budget is funded by the sale of the following:

Spring 2023 Calves.....\$355,000 generated February 2024

AB Fats.....\$20,000 generated December 2023

Cull Cows.....\$20,000 generated May 2023

.....\$18,750 generated February 2024

MC Fats.....\$7,215 generated monthly, beginning in June 2023

FSA Livestock Forage.....\$90,000 generated July 2023

.....\$75,000 generated September 2023

Equipment Sales.....\$20,000 generated June 2023.

**REUSED DOCKET CONTROL NUMBER**

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not

complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

## **CREDITOR'S OPPOSITION**

Creditor Rabo Agrifinance LLC ("Creditor RAF") filed a preliminary opposition on March 15, 2023. Dckt. 27.

Debtor's Motion states Creditor holds first-priority lien on substantially all assets, due to a perfected UCC-1 filing, as well as real property located at 42563 Wilcox Road, Hat Creek, California, in the amount of approximately \$1,700,000. Debtor's Motion, Dckt. 21. Debtor's Schedules, however, state under penalty of perjury that Creditor RAF has a secured claim in the amount of \$0.00, supported by collateral in an amount of \$0.00 and unsecured in the amount of \$0.00. Schedule D, Dckt. 1 at 11. Creditor RAF has not yet filed a proof of claim, however, their opposition states Debtor owes approximately \$2,269,868.81 on an Operating Line of Credit and \$496,569.11 on a Real Estate Line of Credit. Opposition, Dckt. 27 at 3:21-22.

Schedule Creditor RAF objects on the following grounds:

1. No Emergency Articulated:
  - a. The Emergency Motion fails to explain why Debtor in Possession must use Creditor RAF's cash collateral on an emergency basis.
  - b. The Motion fails to provide any details regarding the status of Creditor RAF's collateral, or what, precisely, Debtor in Possession would like to sell. The Motion only states Debtor in Possession plans to sale \$20,000 in "Cull Cows."
2. Shortcomings of Budget:
  - a. The budget does not indicate what is truly necessary for Debtor's continued operations.
  - b. The proposed accounting expense is inappropriate because Debtor has not sought approval to employ an accountant.
  - c. It is not clear whether May budgeted items relate to pre-petition obligations.
  - d. Creditor RAF does not know what cash collateral Debtor currently has on hand.

Creditor RAF requests the Emergency Motion be denied or set on full notice so Debtors may file their schedules and provide information necessary for Creditor RAF and the court to evaluate the proposed use of collateral.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## **DISCUSSION**

The court has not been provided with enough financial information to determine whether the proposed use of cash collateral is in the best interest of the Estate.

First, Debtor has not yet filed all of their required Schedules. Rather, Debtor has only filed Schedules D and E/F. Even these Schedules appear inaccurate as there are discrepancies with the amount of Creditor RAF's secured claim, as detailed above. The court has no information regarding Debtor's financial information, which is necessary to determine whether to grant the Motion.

Second, the court has no information regarding Debtor's assets as of the petition date. Debtor states the "balance available" after one year of the Debtor in Possession Proposed Budget will be \$334,811:

	<b>Monthly Expenses</b>	<b>Monthly Income</b>	<b>Balance Available</b>
<b>May-23</b>	\$11,717	\$20,000	\$8,283
<b>Jun-23</b>	\$23,467	\$27,215	\$12,031
<b>Jul-23</b>	\$75,667	\$97,215	\$33,579
<b>Aug-23</b>	\$20,667	\$7,215	\$20,127
<b>Sep-23</b>	\$23,167	\$82,215	\$79,175
<b>Oct-23</b>	\$32,917	\$7,215	\$53,473
<b>Nov-23</b>	\$23,167	\$7,215	\$37,521
<b>Dec-23</b>	\$20,667	\$27,215	\$44,069
<b>Jan-24</b>	\$15,467	\$7,215	\$35,817
<b>Feb-24</b>	\$58,967	\$380,965	\$357,815
<b>Mar-24</b>	\$17,967	\$7,215	\$347,063
<b>Apr-24</b>	\$19,467	\$7,215	\$334,811
<b>Total</b>	<b>\$343,304</b>	<b>\$678,115</b>	<b>\$334,811</b>

However, the Debtor has not provided the court with information as to what the balance of cash on hand is currently, nor at the time of filing the petition. The court is unable to determine whether the income generated is necessary for the farming operations.

Third, Debtor has not filed their Schedules A/B or C. Debtor appears to be generating income from the sale of cattle and equipment. The Proposed Budget does not indicate the quantity of herd that will be sold in order to generate the necessary income, the fair market value for the specific type of cattle, and what percent of Debtor's herd they will be selling. Absent this information, the court cannot postulate whether the proposed budget is fair and in the best interest of the estate.

Fourth, as Creditor RAF has stated, Debtor has not adequately described what the "emergency" is. It is not clear why the Motion is set on an emergency basis, and why it cannot be set by the full noticed period, allowing creditors and the court proper time to review Debtor's financial reality, and whether the use of cash collateral is necessary for the continued farming operation.

Fifth, although Debtor states Creditor RAF will be adequately protected, Debtor has not described what the "adequate protection payments the Debtor proposes to pay equal to the accruing interest on the Secured Claims" will be.

Sixth, Debtor's Budget includes a monthly expense of \$500 for "Accounting." If Debtor is using an accountant, the employment and compensation of such must be approved consistent with Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 327(a), 328(a), and 330.

#### **MAY 16, 2023 HEARING AND INTERIM AUTHORIZED USE OF CASH COLLATERAL**

Counsel for the Debtor in Possession reported that on May 16, 2023, a cattle report to Creditor. There are 658 head of cattle. The Debtor in Possession is providing documentation to Creditor's counsel.

A long, constructive discussion was conducted at the May 16, 2023, Emergency First Day hearing for the use of cash collateral. Counsel for the Debtor in Possession reported that the FSA Livestock Forage are direct payments from the Dept of Agriculture. Other than that, the Debtor in Possession is generating revenues from the sale of Creditor's collateral.

Counsel for the Debtor in Possession advanced the argument that the monies being spent are to not just maintain Creditor's collateral, the herd, but enhance its value. If the revenues to be generated from the sale as show on the budget are accurate, such would be true.

Counsel for the Debtor in Possession also reported that there is very little cash in the bank today for the estate, and the sale of Creditor's collateral is necessary to move forward, care for the herd, and generate increased revenues from the sale of the her.

Counsel for Creditor pointed out that in January 2023 the Debtor reported that there were 687 cows in the herd, but in June that number had dropped to 658 cows in June 2023 - which included 183 new cows just born. Under the agreements in the State Court Receivership Action Debtor was to report any proposed sales to the Receiver and Creditor, and Creditor does not have information about how the herd was reduced between January and June 2023.

The Debtor in Possession and Creditor agreed to authorize the emergency use of cash collateral to pay the necessary expenses to care for and preserve the herd. These are only for post-petition expenses. The Parties will meet and confer to draft an order authorizing the interim use of cash collateral and continue the hearing to 11:30 a.m. on June 8, 2023.

As discussed at the hearing, the order will not authorize the use of cash collateral for expenses not relating to preserving the herd pending further hearings. An example of such is the "Vehicle Payments" listed on the proposed budget. That is for the Debtor's truck and will be addressed later.

The Debtor in Possession, Creditor, their respective counsel, and the court are limited at this point in time, the Schedules and Statement of Financial Affairs not having yet been filed.

The court authorizes the use of cash collateral for May and June 2023 as outlined above for the proposed budget (Dckt. 31).

Counsel for Creditor and counsel for Debtor in Possession shall joint prepare and lodge with the court a proposed order authorizing such use.

### **June 8, 2023 Hearing**

The court's review of the Docket as of June 5, 2023, showed that no further pleadings were filed.

The Debtor in Possession filed Status Conference Report on May 31, 2023. Dckt. 51. In this Status Report the Debtor in Possession states that are no significant Motion to be prosecuted and that the Debtor in Possession intends to timely file a Chapter 12 Plan of Reorganization.

With respect to providing evidence that Debtor was eligible to file a case under Chapter 12, the following is stated:

The creditor meeting in this case is scheduled for June 6, 2023. Debtors are providing the Chapter 12 Trustee various documents which may provide the Trustee the information he requires to make his report regarding Chapter 12 Eligibility. The vast majority of the debt and income in this case is farm related and eligibility issues are not anticipated.

Status Report, p. 2:7-11; Dckt. 51.

Michael Meyer, the Chapter 12 Trustee, provided his Status Report, filed on June 2, 2023. Dckt. 52. The Trustee discusses the delay in Debtor in filing the required Schedules. Additionally, the Trustee states that the Debtor, who is serving as the Debtor in Possession, has not provided various documents, which is preventing the 341 Meeting of Creditors being conducted. These documents, requested on May 9, 2023, include:

- a. Last Two Years Tax Returns
- b. Bank Statements for The Last Six Months.
- c. Business Licenses
- d. Income Statement and Balance Sheets
- e. Insurance Policies
- f. Cash Flow Statements
- g. Copies of the Deed for each property owned or leased by the debtor including details as to acreage and crop status
- h. Production records with respect to growing crops. Corporate and LLC or LLLP documents.
- i. All lawsuits
- j. List of all inventory and equipment with current values dates of purchase and values when purchased
- k. List of all funds, accounts receivables, claims pending escrows, owed to the business at the time of filing.
- l. Any and all permits required to operate the business.

Trustee Status Report, p. 2:10-27; Dckt. 52.

The Trustee notes that the Order Setting the Chapter 12 Status Conference requires the Debtor, serving as the Debtor in Possession, file with the court for the Status Conference evidence showing

eligibility to file a Chapter 12 Case, not merely provide it to the Trustee. The court's Order setting the Status Conference states:

The court also intends to review the issue of Chapter 12 eligibility. Before the court can confirm a Chapter 12 plan, the court must make a finding that the plan complies with the provisions of Chapter 12 and the other applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1225(a)(1). **One of those provisions is 11 U.S.C. § 101(18), which defines who is a "family farmer" eligible for relief under Chapter 12. Eligibility is a necessary requirement to confirmation of a Chapter 12 plan under § 1225(a)(1). *In re Garako Farms, Inc.*, 98 B.R. 506, 508 (Bankr. E.D. Cal. 1988). The Debtor has the burden of proof to convince the court that the requirements of § 1225 have been met. *Id.* at 509.**

On or before 6/14/23, the **Debtor(s) shall file and serve** on the Chapter 12 Trustee a status report together with **evidence and legal authority to establish that these Debtor(s) are a "family farmer" as that term is defined in § 101(18)(A).** Said evidence shall include, but not be limited to, documentation which illustrates the nature of and parties to each of the farm related secured debts listed in Schedule D. The parties shall also file and serve evidence to show the terms of any partnership agreements, real property leases, crop sharing agreements or other documents which tend to show who owns and operates the farming operation of the Debtors' property. The Trustee is invited to file his report and analysis regarding the issue of eligibility.

Order Setting Chapter 12 Status Conference, p. 2; Dckt. 10. (Emphasis added.)

At the hearing, counsel for the Debtor in Possession reported that a stipulation has been reached with Rabo Agrifinance for the interim use of cash collateral. The parties have prepared a Stipulation to be filed with the court and a proposed order to be lodged with the court. The Stipulation provides for the use of cash collateral through August 11, 2023.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Wesley and Ruth Woolery ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for the Use of Cash Collateral is  
XXXXXXXXXX

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, and Office of the United States Trustee on July 19, 2023. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

**The Motion for Allowance of Professional Fees is granted.**

David C. Johnston, the Attorney ("Applicant") for Joe Anthony Machado, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees in this case.

Fees are requested for the period July 9, 2020, through April 3, 2023. The order of the court, approving employment of Applicant was entered on August 17, 2020. Dckt. 162. Applicant requests fees at a reduced rate in the amount of \$22,840.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include general case administration, fee and employment applications, confirming a plan, and assisting the Debtor, Trustee, and professions with selling Debtor's home and farm property. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES REQUESTED**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 27.3 hours in this category. Applicant prepared all necessary documents for the Chapter 12 case, litigated numerous motions, and communicated with creditors and the Trustee.

Meeting of Creditors: Applicant spent 3.6 hours in this category. Applicant successfully prepared for and completed the Meeting of Creditors.

Fee and Employment Applications: Applicant spent 6.4 hours in this category. Applicant prepared fee and employment applications for himself and a real estate broker.

Chapter 12 Plan: Applicant spent 17.3 hours in this category. Applicant prepared the Chapter 12 Plan, communicated with creditors, and resolved objections.

Asset Sales: Applicant spent 10 hours in this category. Applicant assisted in the sale of Debtor's home and farm property.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
David P. Johnston	64.60	\$360.00	<u>\$23,256.00</u>
<b>Total Fees for Period of Application</b>			\$23,256.00

The court notes, Mr. Johnson is waiving \$416 of fees, and is requesting a total of \$22,840.00 for the legal services provided.

## **FEES ALLOWED**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$22,840.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid from the funds held in trust of \$22,840.00 in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes Applicant to be paid 100% of the fees allowed by the court through the remaining funds held in trust. Applicant is allowed, and Applicant is authorized to disburse from his client trust account and pay the following amounts as compensation to this professional in this case:

Fees	\$22,840.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees filed by David C. Johnston (“Applicant”), Attorney for Joe Anthony Machado, the Debtor in Possession, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that David C. Johnston is allowed the following fees as a professional of the Estate:

David C. Johnston, Professional employed by the Debtor in Possession

Fees in the amount of \$22,840.00,

As the final allowance of fees pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

**IT IS FURTHER ORDERED** that Applicant is authorized to disburse from his client trust account and pay 100% of the fees allowed by this Order from the available funds held in trust in a manner by Applicant.

# FINAL RULINGS

5. [22-90415](#)-E-7  
[DB-5](#)

JOHN MENDOZA  
Peter Macaluso

OBJECTION TO HOMESTEAD  
EXEMPTION  
6-16-23 [[81](#)]

Final Ruling: No appearance at the August 10, 2023 Hearing is required.  
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Pursuant to prior court order, Dckt. 137, the hearing on the Objection to Claim of Homestead Exemption was continued to October 19, 2023 at 10:30 a.m.